

FIRST REGULAR SESSION

HOUSE BILL NO. 96

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHEVE.

Pre-filed December 6, 2000, and 1000 copies ordered printed.

ANNE C. WALKER, Chief Clerk

0565L.011

AN ACT

To repeal sections 443.849, 443.851 and 443.853, RSMo 2000, relating to consumer protection of homeowners, and to enact in lieu thereof two new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 443.849, 443.851 and 443.853, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 407.1180 and 443.849, to read as follows:

407.1180. 1. This section shall be known and may be cited as the "Unfair Home Improvement Loans Act".

2. For the purposes of this section, the following terms mean:

(1) "Consumer", an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family or household purposes;

(2) "Goods", tangible chattel bought or leased for use primarily for personal, family or household purposes, including certificates or coupons exchangeable for such goods and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property whether or not severable therefrom;

(3) "Home solicitation", any transaction made at the consumer's primary residence, except those transactions initiated by the consumer. A consumer response to an advertisement is not a home solicitation;

(4) "Person", an individual, partnership, corporation, limited liability company,

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 association or other group, however organized;

16 (5) "Services", work, labor and services for other than a commercial or business
17 purpose and including services furnished in connection with the sale or repair of goods;

18 (6) "Transaction", an agreement between a consumer and any other person,
19 whether or not the agreement is a contract enforceable by action, and includes the making
20 of, and the performance pursuant to, such agreement.

21 3. The following unfair method of competition and unfair or deceptive act or
22 practice undertaken by any person in a transaction intended to result or which results in
23 the sale or lease of goods or services to any consumer is unlawful:

24 (1) The home solicitation of a consumer during which a loan is made encumbering
25 the primary residence of such consumer for the purposes of paying for home improvements
26 when:

27 (a) The extension of mortgage credit is secured by the consumer's dwelling without
28 regard for the consumer's repayment ability;

29 (b) Payment is made under a home improvement contract from amounts extended
30 as credit under a mortgage, except:

31 a. In the form of an instrument that is payable to the consumer or jointly to the
32 consumer and the contractor; or

33 b. At the election of the consumer, by a third party escrow agent in the form of a
34 written agreement signed by the consumer, creditor and contractor before the date of
35 payment; and

36 (c) The sale or assignment of certain mortgages is made without the provision of
37 a notice stating that the mortgage is subject to any special laws, rules or regulations
38 provided by law.

39 4. A third party shall not be liable pursuant to this section, unless:

40 (1) There was an agency relationship between the party who engaged in the home
41 solicitation and the third party; or

42 (2) The third party had actual knowledge of, or participated in, the unfair or
43 deceptive transaction. A third party who is a holder in due course pursuant to a home
44 solicitation transaction shall not be liable pursuant to this section.

45 5. Any person who violates the provisions of this section is guilty of a class D felony.
46 In addition to any fines, penalties or sentences imposed by law, any person who is convicted
47 of, or pleads guilty or nolo contendere to a violation of this section shall be required to
48 make restitution.

49 6. The provisions of this section shall be applicable to transactions and contracts
50 entered into on or after August 28, 2001.

443.849. [1. Any person who is licensed pursuant to the provisions of sections 443.800 to 443.893, if such person is appointed or elected to any position requiring the receipt of payment, management or use of any money belonging to a residential mortgage licensee engaged in the activities of originating, servicing or purchasing mortgage loans or whose duties permit such person to have access to, or custody of, any of the licensee's money or securities or custody of any money or securities belonging to third parties or whose duties permit such person to regularly make entries in the books or other records of a licensee, shall before assuming such person's duties, maintain a surety bond in the amount of twenty thousand dollars by a fidelity insurance company licensed to do business in this state or a letter of credit in such amount issued by a financial institution that is insured by the Federal Deposit Insurance Corporation.

2. Each bond shall be for any loss the licensee may sustain in money or other property through the commission of any dishonest or criminal act or omission by any person required to be bonded, whether committed alone or in concert with another. The bond shall be in the form and amount approved by the director. The director may at any time require a licensee to have one or more additional bonds. A true copy of every bond, including all riders and endorsements executed subsequent to the effective date of the bond, shall be filed at all times with the director. Each bond shall provide that a cancellation thereof shall not become effective unless and until thirty days' notice, in writing, shall first be given to the director, unless the director had previously approved the cancellation. If the director believes the licensee's business is being conducted in an unsafe manner due to the lack of bonds or the inadequacy of bonds, the director may proceed against the licensee as provided in section 443.879.

3. All licensees shall maintain a bond in accordance with this section. Each bond shall be for the recovery of any expenses, damages or fees owed to, or levied by, the director in accordance with this section. The bond shall be payable when the licensee fails to comply with any provision of sections 443.800 to 443.893 and shall be in the form of a surety or licensure bond in the amount and form as prescribed by the director pursuant to rules and regulations. The bond shall be payable to the director and shall be issued by some insurance company authorized to do business in this state. A copy of the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the director within ten days of the execution thereof.

4. The director may promulgate rules with respect to bonding requirements for residential mortgage licenses as are reasonable and necessary to accomplish the purposes of sections 443.800 to 443.893.] **A corporate surety bond in the principal sum of one hundred thousand dollars shall accompany each application for a license. The bond shall be in form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the**

37 **obligations of the applicant and the agents and subagents of the applicant in connection**
38 **with the activities of originating, servicing or acquiring mortgage loans, including payment**
39 **to providers of third party services. An applicant or licensee may, in lieu of filing any bond**
40 **required pursuant to this section, provide the director with an irrevocable letter of credit,**
41 **as defined in section 400.5-102, RSMo, issued by any financial institution.**

2 [443.851. 1. At the end of the licensee's fiscal year, but in no case more than
3 twelve months after the last audit conducted pursuant to this section and section
4 443.853, each residential mortgage licensee shall cause the licensee's books and
5 accounts to be audited by a certified public accountant not connected with such
6 licensee. The books and records of all persons licensed pursuant to sections 443.800
7 to 443.893 shall be maintained on an accrual basis. The audit shall be sufficiently
8 comprehensive in scope to permit the expression of an opinion on the financial
9 statements in the report and must be performed in accordance with generally accepted
10 accounting principles and generally accepted auditing standards.

11 2. As used in this section and section 443.853, the term "expression of
12 opinion" includes either:

- 13 (1) An unqualified opinion;
- 14 (2) A qualified opinion;
- 15 (3) A disclaimer of opinion; or
- 16 (4) An adverse opinion.

17 3. If a qualified or adverse opinion is expressed or if an opinion is
18 disclaimed, the reasons therefor shall be fully explained. An opinion, qualified as to
19 a scope limitation, shall not be acceptable.

20 4. The audit report shall be filed with the director within one hundred twenty
21 days of the audit date. The report filed with the director shall be certified by the
22 certified public accountant conducting the audit. The director may promulgate rules
regarding late audit reports.]

2 [443.853. 1. If any licensee required to make an audit fails to cause an audit
3 to be made, the director shall cause the audit to be made by a certified public
4 accountant at the licensee's expense. The director shall select such certified public
5 accountant by advertising for bids or by such other fair and impartial means as the
6 director establishes by regulation.

7 2. In lieu of an audit required by this section and section 443.851, the director
8 may accept any audit made in conformance with the audit requirements of the United
9 States Department of Housing and Urban Development.

10 3. The workpapers of the certified public accountants employed by each
11 licensee for purposes of conducting audits required by this section and section
12 443.851 are to be made available to the director or the director's designee upon
13 request and may be reproduced by the director or the director's designee to enable the
director to carry out the purposes of sections 443.800 to 443.893.]